

SUPREME COURT OF WISCONSIN

Appeal Nos. 2020AP1419-OA, 2020AP1420-OA, 2020AP1446-OA

WISCONSIN COUNCIL OF RELIGIOUS AND INDEPENDENT SCHOOLS, SCHOOL CHOICE WISCONSIN ACTION, ABUNDANT LIFE CHRISTIAN SCHOOL, HIGH POINT CHRISTIAN SCHOOL, LIGHTHOUSE CHRISTIAN SCHOOL, PEACE LUTHERAN SCHOOL, WESTSIDE CHRISTIAN SCHOOL, CRAIG BARRETT, SARAH BARRETT, ERIN HAROLDSON, KENT HAROLDSON, KIMBERLY HARRISON, SHERI HOLZMAN, ANDREW HOLZMAN, MYRIAH MEDINA, LAURA STEINHAEUER, ALAN STEINHAEUER, JENNIFER STEMPSKI, BRYANT STEMPSKI, CHRISTOPHER TRUITT and HOLLY TRUITT, *PETITIONERS*,

v.

JANEL HEINRICH, in her official capacity as Public Health Officer and Director of Public Health of Madison and Dane County, and PUBLIC HEALTH OF MADISON AND DANE COUNTY, *RESPONDENTS*.

ST. AMBROSE ACADEMY, INC., ANGELINA HINELINE, JEFFREY HELLER, ELIZABETH IDZI, JAMES CARRANO, LAURA MCBAIN, SARAH GONNERING, ST. MARIA GORETTI CONGREGATION, NORA STATSICK, ST. PETER'S CONGREGATION, ANNE KRUCHTEN, BLESSED SACRAMENT CONGREGATION, AMY CHILDS, BLESSED TRINITY CONGREGATION, COLUMBIA/DANE COUNTY, WI INC., LORETTA HELLENBRAND, IMMACULATE HEART OF MARY CONGREGATION, LORIANNE AUBUT, ST. FRANCIS XAVIER'S

CONGREGATION, MARY SCOTT, SAINT DENNIS
CONGREGATION AND RUTH WEIGEL-STERR, *PETITIONERS*,

v.

JOSEPH T. PARISI, in his official capacity as County Executive of
Dane County and JANEL HEINRICH, in her official capacity as
Director, Public Health, Madison & Dane County, *RESPONDENTS*.

SARA LINDSEY JAMES, *PETITIONER*,

v.

JANEL HEINRICH, in her capacity as Public Health Officer of
Madison and Dane County, *RESPONDENT*.

**Motion for Leave to File a Non-Party Brief
on behalf of Madison Teachers Inc., Wisconsin Association of
Local Health Departments and Boards, Wisconsin Education
Association Council, Milwaukee Teachers' Education Association,
Racine Educators United, Kenosha Education Association,
and Green Bay Education Association
Under Wis. Stat. § 809.19(7)(a)**

Madison Teachers Inc., Wisconsin Association of Local Health
Departments and Boards, Wisconsin Education Association Council,
Milwaukee Teachers' Education Association, Racine Educators
United, Kenosha Education Association and Green Bay Education

Association (collectively, “Movants”), by their counsel, move the Court, pursuant to Wis. Stat. § 809.19(7)(a), for permission to file a non-party brief in support of the Respondents. In support of this motion, the Movants state:

1. The Court generally benefits from the reasoned perspective of interested non-parties. Movants collectively and individually offer unique perspectives that the parties do not and cannot provide.
2. Madison Teachers Inc. (“MTI”) is a labor union located in Madison, Wisconsin. It is the exclusive representative of employees in five collective bargaining units (teachers, educational assistants, substitute teachers, clerical and technical employees and security assistants) employed by the Madison Metropolitan School District.
3. The Wisconsin Education Association Council (“WEAC”) is a statewide union whose members are employed by public school districts in the State of Wisconsin and include teachers, education support personnel, school nurses,

social workers, guidance counselors and technical college faculty and staff.

4. Milwaukee Teachers' Education Association ("MTEA") is a labor organization that represents over 5,000 employees of the Milwaukee Public Schools, the largest primary and secondary school system in the state. MTEA members work directly with the students who attend Milwaukee's public schools, and include teachers, paraprofessionals, safety assistants, sign language interpreters, bookkeepers, school counselors, librarians, nurses, social workers, speech pathologists, occupational therapists, physical therapists, CNAs, LPNs, building service helpers, and food service workers.
5. Racine Educators United ("REU") is a union representing teachers, nurses, psychologists, social workers and educational assistants in the Racine Unified School District. REU brings together the Racine Education Association and

the Racine Educational Assistants Association in a combined governance structure.

6. The Kenosha Education Association (“KEA”) is a member-driven labor organization consisting of teachers, education support professionals, and substitute teachers employed by the Kenosha Unified School District. The association works collectively with educators and community members to improve teaching and learning conditions to ensure every child can attend a high-quality public school.
7. The Green Bay Education Association (“GBEA”) is a professional labor organization of educators and paraprofessionals working in the Green Bay Area Public School District. The GBEA represents the public policy, labor, and professional interests of its members.
8. Members of MTI, WEAC, MTEA, REU, KEA and GBEA teach and support the students throughout Wisconsin. Their work normally involves day-to-day interaction with large numbers of students from all socio-economic classes,

in close proximity to one another within school buildings and classrooms.

9. The Wisconsin Association of Local Health Departments and Boards (“WALHDAB”) is an 89-member non-profit association comprised of local health departments and boards and tribal health centers from cities and counties around Wisconsin. WALHDAB is the statewide leader and voice for local governmental public health.
10. The local health officers comprising WALHDAB provide local public health services and work in conjunction with the Wisconsin Department of Health Services (“DHS” or “the Department”). Local health officers are statutorily charged under Wis. Stat. § 252.03 to act to stop the spread of communicable diseases.
11. Starting in late 2019, governments of other countries, then international health organizations, then individual states, including Wisconsin, came to recognize the public health

emergency presented by a novel strain of coronavirus now named COVID-19.

12. Schools were identified early on as one of the most dangerous sites for transmission of COVID-19, prompting the Department's first closure order: DHS closed schools for purposes of pupil instruction and extracurricular activities statewide, beginning March 18, 2020, as "a reasonable and necessary step to prevent, suppress, and control this disease." Wis. Dept. of Health Servs. Emergency Order #5 (March 17, 2020).¹

13. Wisconsin is at a critical stage of the most extreme public health and safety emergency anyone in the state has likely experienced. Not since the Spanish flu pandemic of 1918, which infected 103,000 and killed 8,459 Wisconsinites, has Wisconsin experienced such a threat to the public safety.

14. As of Sunday, November 15, 2020, 312,369 Wisconsinites have tested positive for COVID-19; 14,381 have been

¹ Available at:
<https://evers.wi.gov/Documents/COVID19/UPDATEDOrder10People.pdf>.

hospitalized; and 2,637 Wisconsinites have died. On November 14, 2020, 4,848 people in Wisconsin tested positive for COVID-19. The seven-day average of percent positive was 36.5%.²

15. Research has found most children infected with COVID-19 exhibit mild symptoms or are asymptomatic. Researchers have recommended that these findings be considered in analysis of transmission and control. Specifically, the researchers hypothesized that “children, even when presenting with mild symptoms or . . . asymptomatic, might be a source of viral transmission. This underscores the importance of extensive preventative strategies that include quarantining and limitation of playing and school activities.”³

² Wis. Dep’t of Health Services, COVID-10: Wisconsin Summary Data, <https://www.dhs.wisconsin.gov/covid-19/data.htm#summary> (last viewed November 15, 2020).

³ Riccardo Castagnoli, MD, Martina Votto, MD, Amelia Licari, MD, et al., *Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) Infection in Children and Adolescents, A Systematic Review*, *JAMA Pediatr.*, published online April 22, 2020, <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2765169>.

16. In addition, the Centers for Disease Control (“CDC”) identifies older adults and those of all ages with certain underlying health conditions – groups that are well-represented in the Unions’ membership and their families – as having a higher risk of developing more serious complications from COVID-19.⁴ The CDC recommends that older adults stay home as much as possible during times of spread.⁵

17. The education associations are vitally interested in this litigation because their members, the students they teach, and the families they all return home to, are affected by the existence or lack of health orders addressing in-person instruction at schools.

⁴ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), People Who Are at Higher Risk, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last visited April 27, 2020).

⁵ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), Older Adults, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited April 27, 2020).

18. The outcome of this case will affect the educators and the people they care for and love, who may remain healthy, get sick, or die. They want the risks to themselves, their families, and their communities to be managed sensibly by public health experts, including local health officers.
19. Their members are among the most exposed to COVID-19 infection through their work, and also especially needed to remain healthy for the duration of this pandemic. They are at risk of losing their lives due to COVID-19, not just their livelihoods. They depend on the local health officers who work closely with the DHS Division of Public Health, the Centers for Disease Control, the World Health Organization, and an organized network of local public health departments, to protect them. They want this public health emergency to be managed by people who focus on communicable diseases and how to prevent their spread—every single day.

20. WALHDAB members seek to protect people across the State, ranging from smaller municipalities and counties to the largest and most diverse municipalities in the state. Local health officers across Wisconsin have experienced COVID-19 in their communities.

21. WAHLDAB members have a substantial interest in clarifying the statutory authority of public health officers as it relates to limiting in-person instruction at schools as one possible way to ensure the health and well-being of their residents. Local health officers face challenges that are unprecedented, given the lack of effective treatment or the ready availability of an effective vaccine.

22. WALHDAB members also have a substantial interest in ensuring that they are able to take reasonable and necessary measures to control the spread of communicable diseases in their communities.

23. This nonparty brief provides the Court with “boots on the ground” perspectives – of both local health officers and school personnel.

24. Granting this motion will not cause delay or prejudice.

The motion and the non-party brief are being filed in a timely manner, pursuant to Wis. Stat. § 809.19(7)(a).

FOR THESE REASONS, Madison Teachers Inc., the Wisconsin Association of Local Health Departments and Boards, Wisconsin Education Association Council, Milwaukee Teachers’ Education Association, Racine Educators United, Kenosha Educators Association, and Green Bay Education Association respectfully request that the Court grant them permission to file a non-party brief in this appeal and accept the proposed brief filed herewith.

Respectfully submitted this 16th day of November, 2020.

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